

1-1 By: Price (Senate Sponsor - Whitmire) H.B. No. 1685
1-2 (In the Senate - Received from the House April 24, 2013;
1-3 April 25, 2013, read first time and referred to Committee on
1-4 Business and Commerce; May 1, 2013, reported favorably by the
1-5 following vote: Yeas 6, Nays 0; May 1, 2013, sent to printer.)

1-6 COMMITTEE VOTE

1-7	Yea	Nay	Absent	PNV
1-8	X			
1-9			X	
1-10			X	
1-11	X			
1-12			X	
1-13	X			
1-14	X			
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to the continuation of the self-directed and
1-20 semi-independent status of the Texas State Board of Public
1-21 Accountancy, the Texas Board of Professional Engineers, and the
1-22 Texas Board of Architectural Examiners.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. The Self-Directed Semi-Independent Agency
1-25 Project Act (Article 8930, Revised Statutes) is transferred to
1-26 Subtitle E, Title 4, Government Code, redesignated as Chapter 472,
1-27 Government Code, and amended to read as follows:

1-28 CHAPTER 472 [Art. 8930]. SELF-DIRECTED SEMI-INDEPENDENT AGENCIES

1-29 SUBCHAPTER A. GENERAL PROVISIONS [AGENCY PROJECT ACT].

1-30 [Sec. 1. SHORT TITLE. This Act shall be known as the
1-31 Self-Directed Semi-Independent Agency Project Act.]

1-32 Sec. 472.001. APPLICABILITY OF CHAPTER. This chapter
1-33 applies to [2. AGENCY PARTICIPATION. The following agencies shall
1-34 be part of the pilot project created by this Act]:

- 1-35 (1) the Texas State Board of Public Accountancy;
1-36 (2) the Texas Board of Professional Engineers; and
1-37 (3) the Texas Board of Architectural Examiners.

1-38 Sec. 472.002 [3]. DEFINITION. In this chapter [Act],
1-39 "[project] agency" means an agency listed in Section 472.001 [2 of
1-40 this Act].

1-41 SUBCHAPTER B. STATUS OF AGENCIES

1-42 Sec. 472.051 [4]. SELF-DIRECTED AND SEMI-INDEPENDENT
1-43 STATUS OF AGENCIES [PILOT PROJECT]. (a) Each [Notwithstanding any
1-44 other provision of law, each project] agency is [shall become]
1-45 self-directed and semi-independent as specified in this chapter
1-46 [Act. To allow the pilot project the opportunity to test the
1-47 effectiveness of operating under the provisions of this Act, any
1-48 Act of the 78th Legislature that relates to an agency included in
1-49 Section 2 of this Act and that is inconsistent with being
1-50 self-directed and semi-independent may be implemented on
1-51 authorization by the governing board of the agency].

1-52 (b) Each [project] agency is [shall continue to be] a state
1-53 agency, as that term is defined in Section 2001.003(7) [, Government
1-54 Code].

1-55 (b-1) Except as otherwise provided by this chapter, each
1-56 agency is subject to a provision of law that applies to state
1-57 agencies, including:

1-58 (1) state purchasing requirements under Subtitle D,
1-59 Title 10;

1-60 (2) interagency transfer voucher requirements under
1-61 Section 2155.327;

(3) travel requirements under Chapters 2171 and 2205, using amounts provided by the General Appropriations Act to guide travel reimbursement rates; and

(4) prompt payment requirements under Chapter 2251.

(c) The Sunset Advisory Commission shall examine each agency's performance as a self-directed and semi-independent agency and the agency's compliance with this chapter as part of the commission's periodic review of the agency under [This Act is subject to] Chapter 325[, Government Code] (Texas Sunset Act)[~~Unless continued in existence as provided by that chapter, this Act expires September 1, 2013~~].

(d) Each agency shall pay the cost incurred by the Sunset Advisory Commission in performing a review of the agency under the agency's enabling legislation. The Sunset Advisory Commission shall determine the cost, and the agency shall pay the amount promptly on receipt of a statement from the Sunset Advisory Commission detailing the cost.

SUBCHAPTER C. POWERS AND DUTIES OF AGENCIES

Sec. 472.101 [5]. GENERAL DUTIES OF ALL [PROJECT] AGENCIES. In addition to the duties enumerated in the enabling legislation specifically applicable to each [project] agency, each [project] agency shall have the duties prescribed by Sections 472.102 [6] through 472.105 [9 of this Act].

Sec. 472.102 [6]. BUDGET. (a) An [A-project] agency shall adopt a budget annually using generally accepted accounting principles. The budget shall be reviewed and approved only by the [project] agency's governing board notwithstanding any other provision of law, including the General Appropriations Act. No costs shall be incurred by the general revenue fund. An [A-project] agency shall be responsible for all costs, both direct and indirect.

(b) An [A-project] agency shall keep financial and statistical information as necessary to disclose completely and accurately the financial condition and operation of the [project] agency.

(c) The Texas State Board of Public Accountancy shall annually remit \$703,344 to the general revenue fund, the Texas Board of Professional Engineers shall annually remit \$373,900 to the general revenue fund, and the Texas Board of Architectural Examiners shall annually remit \$510,000 to the general revenue fund.

Sec. 472.103 [7]. AUDITS. Nothing in this chapter [Act] shall affect the duty of the state auditor [State Auditor] to audit an [a-project] agency. The state auditor [State Auditor] shall enter into a contract and schedule with each [project] agency to conduct audits, including financial reports and performance audits. Costs incurred in performing such audits shall be reimbursed by the [project] agency.

Sec. 472.104 [8]. REPORTING REQUIREMENTS. (a) An [A-project] agency shall submit to the legislature and the governor by the first day of the regular session of the legislature a report describing all of the agency's activities in the previous biennium. The report shall include:

(1) an audit required by Section 472.103 [7 of this Act];

(2) a financial report of the previous fiscal year;

(3) a description of any changes in licensing fees;

(4) a report on the number of examination candidates, licensees, certificate holders, and enforcement activities and any changes in those figures; and

(5) a description of all new rules adopted or repealed.

(b) In addition to the reporting requirements of Subsection (a) [of this section], each [project] agency shall report annually, not later than November 1, to the governor, to the committee of each house of the legislature that has jurisdiction over appropriations, and to the Legislative Budget Board the following:

(1) the salary for all [project] agency personnel and the total amount of per diem expenses and travel expenses paid for

all agency employees, including trend performance data for the preceding five fiscal years;

(2) the total amount of per diem expenses and travel expenses paid for each member of the governing body of each [project] agency, including trend performance data for the preceding five fiscal years;

(3) each [project] agency's operating plan covering a period of two fiscal years;

(4) each agency's operating [and] budget, including revenues and a breakdown of expenditures by program and administrative expenses, showing:

(A) projected budget data for [covering] a period of two fiscal years [two-year period]; and

(B) trend performance data for the preceding five fiscal years; and

(5) trend performance data for the preceding five fiscal years regarding:

(A) the number of full-time equivalent positions at the agency;

(B) the number of complaints received from the public and the number of complaints initiated by agency staff;

(C) the number of complaints dismissed and the number of complaints resolved by enforcement action;

(D) the number of enforcement actions by sanction type;

(E) the number of enforcement cases closed through voluntary compliance;

(F) the amount of administrative penalties assessed and the rate of collection of assessed administrative penalties;

(G) the number of enforcement cases that allege a threat to public health, safety, or welfare or a violation of professional standards of care and the disposition of those cases;

(H) the average time to resolve a complaint;

(I) the number of license holders or regulated persons broken down by type of license and license status, including inactive status or retired status;

(J) the fee charged to issue and renew each type of license, certificate, permit, or other similar authorization issued by the agency;

(K) the average time to issue a license;

(L) litigation costs, broken down by administrative hearings, judicial proceedings, and outside counsel costs; and

(M) reserve fund balances [~~(4) a detailed report of all revenue received and all expenses incurred by the project agency in the previous 12 months~~].

Sec. 472.105 [9]. DISPOSITION OF FEES COLLECTED. If provided in an [a project] agency's enabling legislation, the [project] agency shall collect a professional fee of \$200 from its license holders [licensees] annually, which shall be remitted to the state. If provided in an [a project] agency's enabling legislation, the [project] agency shall collect a scholarship fee of \$10 annually from its license holders [licensees and shall remit it to the state].

Sec. 472.106 [10]. GENERAL POWERS OF ALL [PROJECT] AGENCIES. In addition to the powers enumerated in each [project] agency's enabling legislation, each [project] agency shall have the powers described in Sections 472.107 [11] through 472.110 [14 of this Act].

Sec. 472.107 [11]. ABILITY TO CONTRACT. To carry out and promote the objectives of this chapter, an [Act, a project] agency may enter into contracts and do all other acts incidental to those contracts that are necessary for the administration of its affairs and for the attainment of its purposes. Any [~~provided, however, that any~~] indebtedness, liability, or obligation of the [project] agency shall not:

(1) create a debt or other liability of the state or any other entity other than the [project] agency; or

(2) create any personal liability on the part of the members of the board of the ~~[project]~~ agency or its employees.

Sec. 472.108 ~~[12]~~. PROPERTY. An ~~[A-project]~~ agency may acquire by lease, and maintain, use, and operate, any real, personal, or mixed property necessary to the exercise of the powers, rights, privileges, and functions of the agency.

Sec. 472.109 ~~[13]~~. SUITS. The office of the attorney general shall represent an ~~[a-project]~~ agency in any litigation. The attorney general may assess and collect from the ~~[project]~~ agency reasonable attorney's fees associated with any litigation under this section.

Sec. 472.110 ~~[14]~~. FEES AND DISPOSITION OF FUNDS. (a) Subject to the limitations, if any, in the applicable enabling legislation, each ~~[project]~~ agency may set the amount of fees by statute or rule as necessary for the purpose of carrying out the functions of the ~~[project]~~ agency.

(b) All fees and funds collected by an ~~[a-project]~~ agency, ~~[during the pilot project and]~~ any funds appropriated to the ~~[project]~~ agency, and any other funds belonging to or under the control of an agency shall be deposited in interest-bearing deposit accounts in the Texas Treasury Safekeeping Trust Company. The comptroller shall contract with the ~~[project]~~ agency for the maintenance of the deposit accounts under terms comparable to a contract between a commercial banking institution and its customers. An agency may not hold funds in an account that is not under the control of the comptroller.

(c) An ~~[A-project]~~ agency shall use the comptroller's uniform statewide accounting system under Chapter 2101 to make all payments, other than direct payments from an agency's account to the Texas Treasury Safekeeping Trust Company ~~[may retain each fiscal year an amount of fines and other revenue the project agency receives during the fiscal year as a result of enforcement actions that is equal to 20 percent of the total amount expended by the project agency during the previous fiscal year, not to exceed \$1 million]~~.

(d) An agency shall remit all administrative penalties collected by the agency to the comptroller for deposit in ~~[At the end of each fiscal year 50 percent of the unexpended balance of the amount retained in Subsection (c) of this section shall be deposited to the credit of]~~ the general revenue fund.

Sec. 472.111 ~~[15]~~. POST-PARTICIPATION LIABILITY. (a) If a state agency no longer has status under this chapter ~~[Act]~~ as a self-directed semi-independent ~~[project]~~ agency ~~[either because of the expiration of this Act or]~~ for any ~~[other]~~ reason, the state agency shall be liable for any expenses or debts incurred by the state agency during the time the state agency had status as a self-directed semi-independent agency ~~[participated in the pilot project]~~. The state agency's liability under this section includes liability for any lease entered into by the state agency. The state is not liable for any expense or debt covered by this subsection, and money from the general revenue fund may not be used to repay the expense or debt.

(b) If a state agency no longer has status under this chapter ~~[Act]~~ as a self-directed semi-independent ~~[project]~~ agency ~~[either because of the expiration of this Act or]~~ for any ~~[other]~~ reason, ownership of any property or other asset acquired by the state agency during the time the state agency had status as a self-directed semi-independent agency ~~[participated in the pilot project]~~, including unexpended fees in a deposit account in the Texas Treasury Safekeeping Trust Company, shall be transferred to the state.

Sec. 472.112 ~~[16]~~. OPEN GOVERNMENT. Subject to the confidentiality provisions of an ~~[a-project]~~ agency's enabling legislation:

(1) meetings of the ~~[project]~~ agency are subject to Chapter 551~~[, Government Code]~~; and

(2) records maintained by the ~~[project]~~ agency are subject to Chapter 552~~[, Government Code]~~.

Sec. 472.113 ~~[17]~~. MEMBERSHIP IN EMPLOYEES ~~[EMPLOYEE]~~

5-1 RETIREMENT SYSTEM. Employees of the [~~project~~] agencies are members
 5-2 of the Employees Retirement System of Texas under Chapter 812,
 5-3 [~~Government Code,~~] and the agencies' [~~transition to~~] independent
 5-4 status shall have no effect on their membership.

5-5 Sec. 472.114 [~~18~~]. GIFTS. (a) Notwithstanding other law,
 5-6 an [~~a project~~] agency may not accept a gift, grant, or donation:

5-7 (1) from a party to an enforcement action; or
 5-8 (2) to pursue a specific investigation or enforcement
 5-9 action.

5-10 (b) An [~~A project~~] agency must:

5-11 (1) report each gift, grant, or donation that the
 5-12 agency receives as a separate item in the agency's detailed report
 5-13 under Section 472.104(b) [~~8(b) of this Act~~]; and

5-14 (2) include with the report a statement indicating the
 5-15 purpose for which each gift, grant, or donation was used.

5-16 SECTION 2. Section 901.658, Occupations Code, is amended to
 5-17 read as follows:

5-18 Sec. 901.658. FUNDING. The board may:

5-19 (1) use without appropriation, in accordance with
 5-20 [~~Article 8930, Revised Statutes,~~] this subchapter[~~7~~] and Section
 5-21 901.155, any money from the trust fund established under Section
 5-22 901.155; and

5-23 (2) accept gifts, grants, and donations of real or
 5-24 personal property from any entity, subject to limitations or
 5-25 conditions set by law, for the purposes of this subchapter.

5-26 SECTION 3. Section 1001.507, Occupations Code, is repealed.

5-27 SECTION 4. Section 472.104(b), Government Code, as
 5-28 redesignated and amended by this Act, applies only to a report
 5-29 originally due on or after the effective date of this Act. A report
 5-30 originally due before the effective date of this Act is governed by
 5-31 the law in effect on the date the report was originally due, and the
 5-32 former law is continued in effect for that purpose.

5-33 SECTION 5. Not later than October 1, 2013, each agency, as
 5-34 that term is defined by Section 472.002, Government Code, as
 5-35 redesignated and amended by this Act, shall transfer any funds held
 5-36 in an account not under the control of the comptroller of public
 5-37 accounts to an account that is under the control of the comptroller
 5-38 of public accounts, as provided by Section 472.110(b), Government
 5-39 Code, as redesignated and amended by this Act.

5-40 SECTION 6. Sections 472.110(c) and (d), Government Code, as
 5-41 redesignated and amended by this Act, and the repeal by this Act of
 5-42 Section 1001.507, Occupations Code, apply only to an administrative
 5-43 penalty that is collected on or after the effective date of this
 5-44 Act. An administrative penalty that is collected before the
 5-45 effective date of this Act is governed by the law in effect on the
 5-46 date the administrative penalty was collected, and the former law
 5-47 is continued in effect for that purpose.

5-48 SECTION 7. This Act takes effect September 1, 2013.

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